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LETTER DATED 7 DECEMBER 1995 FROM THE CHAIRMAN OF THE SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to refer to paragraph 7 of Security Council resolution 715 (1991), by which the Council:

> "Requests the Security Council Committee established under resolution 661 (1990) concerning the situation between Iraq and Kuwait, the Special Commission and the Director General of the [International Atomic Energy] Agency to develop in cooperation a mechanism for monitoring any future sales or supplies by other countries to Iraq of items relevant to the implementation of section C of resolution 687 (1991) and other relevant resolutions, including the present resolution and the plans approved hereunder;".

I am transmitting herewith, with the concurrence of the Executive Chairman of the Special Commission and the Director General of the International Atomic Energy Agency (IAEA), a report prepared by the Committee established by Security Council resolution 661 (1990), the Special Commission and the Director General of IAEA that contains the provisions for the mechanism for export/import monitoring under paragraph 7 of Security Council resolution 715 (1991) of 11 October 1991.

The report is also accompanied by the text of a letter, dated 17 July 1995, which was addressed to me by the Executive Chairman of the Special Commission. This indicates the general principles that will be followed in implementing the export/import mechanism in Iraq and it is transmitted to the Council for purposes of information.

It is hoped that it will be possible for the Council to take an early decision on the report transmitted herewith, so that preparations, as necessary, may be pursued at the national level for the implementation, at the appropriate time, of the export/import mechanism. Such a decision will also allow the Special Commission and IAEA, which the report proposes be mandated to implement

the mechanism, to proceed with those preparations which, until now, it has not yet undertaken, pending a mandate.

(Signed) Tono EITEL
Chairman of the Security Council Committee
established by resolution 661 (1990)
concerning the situation between
Iraq and Kuwait

Annex I

Provisions for the mechanism for export/import monitoring under paragraph 7 of Security Council resolution 715 (1991) of 11 October 1991

Report prepared by the Committee established by Security Council resolution 661 (1990), the Special Commission and the Director General of the International Atomic Energy Agency

I. OBJECTIVE

1. By paragraph 7 of its resolution 715 (1991) of 11 October 1991, the Security Council:

> "Requests the Security Council Committee established under resolution 661 (1990) concerning the situation between Iraq and Kuwait, the Special Commission and the Director General of the [International Atomic Energy] Agency, to develop in cooperation a mechanism for monitoring any future sales or supplies by other countries to Iraq of items relevant to the implementation of section C of resolution 687 (1991) and other relevant resolutions, including the present resolution and the plans approved hereunder".

The present report is submitted to the Security Council pursuant to that request.

2. The export/import mechanism (hereafter "the mechanism") is one element of the Special Commission's and IAEA's plans (S/22871/Rev.1 and S/22872/Rev.1 and Rev.1/Corr.1), approved by Security Council resolution 715 (1991), for ongoing monitoring and verification of Iraq's undertaking not to reacquire proscribed weapons capabilities. Such monitoring is of indefinite duration and is to continue until the Security Council decides that it should be terminated.

3. Paragraph 7 of resolution 715 (1991) makes provision for the monitoring of sales or supplies by other countries to Iraq of items covered by the two plans after the sanctions imposed by resolution 661 (1990) on those items have been reduced or lifted pursuant to paragraph 21 of resolution 687 (1991). The mechanism should provide important data, which will serve as one of the main tools for ensuring that Iraq does not reconstitute its weapons of mass destruction programmes. It is evident, therefore, that the mechanism must be in place before any decisions are taken by the Security Council to reduce or lift sanctions on items covered by the relevant resolutions and the plans.

4. It follows that there will be a period of time after the Security Council adopts the mechanism before it reduces or lifts sanctions on items covered by the mechanism. For as long as these items remain subject to the sanctions under resolution 661 (1990), the Committee established under that resolution shall continue to perform its present functions, and any requests for the sale of such items to Iraq, as essential for civilian needs, should be addressed in

accordance with existing procedures. The Committee shall seek the advice of the Commission or IAEA, as the case may be, on the disposition of the request. If authorization is granted by the Committee, the Commission and IAEA will be so informed to enable them to make the necessary arrangements to monitor the items in Iraq.

5. The mechanism takes account of the requirements of paragraph 7 of resolution 715 (1991), and of certain elements in the plans approved under that resolution including a requirement for timely information about any sale or supply to Iraq by other States of items covered by the plans. The mechanism also takes account of the continued embargo on the sale or supply to Iraq of items prohibited by paragraphs 8 and 12 of resolution 687 (1991).

6. The mechanism is not a regime for international licensing, but rather for the timely provision of information by States in which companies are located which are contemplating sales or supplies to Iraq of items covered by the plans. 1/ Iraq's obligations, comprehensively spelled out in the plans, are further detailed in the mechanism.

7. Even without inspecting every import into Iraq, it is feasible to establish an effective and credible mechanism. It must be robust enough to deter Iraq and suppliers 2/ from potential breaches. The mechanism must also be augmented by the ability of the Commission and IAEA to conduct unrestricted inspections throughout Iraq. No other existing export/import control has such supplementary ground inspection rights. Nevertheless, to be workable, the mechanism must also be sufficiently simple so as not to place an undue reporting burden on Governments. The aim is to encourage companies and Governments to report all of interest, while keeping data volume manageable for all concerned.

8. Each Government shall determine what measures it has to take to give effect internally to the notification requirements under the mechanism (e.g. requiring national licences). Each Government shall remain free to enact prohibitions or controls on exports that go beyond the requirements of the Security Council resolutions and the mechanism.

9. The mechanism aims to secure timely notification of the export to Iraq of any items identified in the plans for ongoing monitoring and verification. Both Iraq and the Governments of suppliers shall provide these notifications in advance of shipment. These notifications shall identify the supplier, give a description of the item or items (including technology) and provide the name of the end-user or consignee and the expected date of dispatch/shipping. Other information, when available to the Government of the supplier, which should assist in administering the mechanism, shall also be included in the standardized notification forms referred to in paragraph 14 below. The notifications are imperative, as they make it possible to monitor the supply to Iraq of all items covered by the plans, both non-proscribed dedicated-use items and dual-use items (i.e., those items that can be used for either permitted or proscribed purposes). Iraq shall also report the export of items subject to the plans, whether such items are in the original or modified form, so that the Commission and IAEA can maintain full accounting for all monitored items.

10. If an item, the import of which should have been notified under the mechanism but was not, is found in Iraq, the import would constitute a case of non-compliance with the monitoring regime established by the plans for ongoing monitoring and verification. The steps to be taken in cases of non-compliance are defined in paragraphs 22 to 24 of the Special Commission's plan and paragraphs 36 to 39 of the IAEA plan. The strong presumption would be that the item had been procured for prohibited purposes and so, as such, would be subject to disposal in accordance with the measures provided for in paragraphs 8 and 12 of Security Council resolution 687 (1991).

II. SCOPE

11. The annexes to the plans for ongoing monitoring and verification, and any appendices thereto, identify the items and technologies which Iraq, as importer, and the Government of the supplier, as exporter, shall notify. A compendium of definitions of terms used in the annexes shall be provided to Governments. This compendium shall have the same status as the annexes.

12. For purposes of monitoring within Iraq and reporting by Iraq, such monitoring and reporting covers all items and technologies provided for in the plans and their annexes, including appendices, whether identified generically or specifically.

13. For Governments of suppliers, their notification obligations shall be limited to the items and technologies that are specifically identified. 3/ The annexes also identify items the export of which to Iraq is prohibited under the Security Council's resolutions. The procedures to be followed in respect of such items are contained in paragraphs 24 and 25 below.

14. Standardized export/import notification forms shall be made available by the Commission and IAEA to Governments. Supplementary information and clarifications regarding completion of the forms and other aspects of the monitoring regime shall be provided by the Commission and IAEA to Governments in circular notes of an advisory character. These notes shall be used to give, for example, details on the practical implementation of the mechanism, such as the timing for submission of notifications.

15. Should experience over time demonstrate the need, or new technologies so require, the annexes may be amended in accordance with the plans, after appropriate consultations with interested States and, as laid down in the plans, notification to the Security Council.

III. CHARACTERISTICS OF THE MECHANISM

16. Resolution 715 (1991) foresees a unified monitoring mechanism, under the Security Council. A single address for communications from Governments, including the completed notification forms, would greatly simplify the task of Governments. A joint unit, constituted by the Commission and IAEA, shall be established at United Nations Headquarters in New York, where the largest number of Governments are represented. This Unit shall receive, for action by the

Commission or IAEA, as the case may be, all communications from Governments. Action by the Commission and IAEA shall be coordinated closely, especially where the items concerned come under the provisions of both plans for ongoing monitoring and verification, and any following correspondence on such items shall be shared between the Commission and IAEA. The notifications Iraq is required to submit shall be delivered to the Baghdad Monitoring and Verification Centre, which shall serve both the Commission and IAEA, for onward transmission to the Joint Unit in New York.

17. In all relevant areas, a comprehensive exchange of information between the Commission and IAEA shall take place. The capability to draw on the resources of the Commission and IAEA in their respective spheres of competence may be essential, in certain instances, for the determination of the potential uses of a particular item subject to notification and thus of its correct characterization under the plans and the mechanism. It is important that the Commission and IAEA have this independent capability in order to avoid any possible claims of partiality. In a similar vein, recognizing that information provided in notifications may, in certain instances, be proprietary and sensitive for commercial reasons, the information provided shall be treated as confidential and restricted to the Commission and IAEA, to the extent that this is consistent with their respective responsibilities under Security Council resolution 715 (1991), other relevant resolutions and the plans.

18. The information provided shall be stored both manually and electronically and collated with other information derived from inspections and declarations, in order to assess the extent of Iraq's compliance. It is important for implementation of the overall monitoring process as it:

(a) Provides information on denied exports, thereby acting as a means of identifying possible proscribed activities;

(b) Allows inspectors to tag notified equipment as it is imported into the country;

(c) Allows inspectors to verify the location of imported materials;

(d) Alerts inspectors to the locations of new facilities relevant to monitoring;

(e) Monitors the quantities of materials imported, in order to identify any increase in import which may be out of proportion to commercial and other non-proscribed requirements.

The information shall also provide an essential tool for the designation of sites, facilities, activities, materials and other items in Iraq for inspection purposes.

19. The notification procedure must be swift and, as far as possible, while being consistent with the terms set down by the Security Council, not impede Iraq's legitimate right to import or export items for non-proscribed uses. To that end, these notification forms shall apply to transactions involving any type of reportable item (dual-use items or proscribed and non-proscribed

dedicated-use items, as determined under the Council's resolutions). Two separate sets of forms are envisaged; one for Iraq to complete and the other for the Government of the supplier to complete. Each transaction shall have a unique designator number assigned by the Joint Unit, to be used where available in all correspondence. This obviates the requirement to repeat information. Substantive changes to earlier statements shall be transmitted to the Joint Unit by Iraq and the Government of the supplier as those changes become known to them.

20. Each form shall be in two parts, with an acknowledgement section. Iraq should facilitate the process by filing notifications as early as possible in the transaction. The onus shall be on Iraq to ensure that a supplier understands its part in the notification process. In this regard, Iraq shall inform the supplier of the unique designator number assigned by the Joint Unit on the basis of Iraq's initial notification. This would help to avoid confusion arising, for example, from differing descriptions of the exported item by Iraq and by the supplier.

21. The forms themselves shall be developed by the Commission and IAEA, bearing in mind standardized international practice in respect of commodity description and coding in international trade. The forms shall be available in English and French and shall be submitted to the Joint Unit in either one of these languages so as to facilitate and expedite the processing of the forms.

22. In order to facilitate the work of the Joint Unit and monitoring inspections, Iraq shall maintain files with the relevant documentation (e.g. contracts, shipping documents, letters of credit, etc.) for imports of all items subject to notification by it. These files shall be available to the Commission or IAEA, as the case may be, upon request. Full files shall be kept at the points of entry and by the Iraqi National Monitoring Directorate. Copies of relevant documentation shall accompany each item as it is transported between its point of entry and the site of end-use. Relevant technical documentation shall also be available at the end-use site for inspection by the Commission or IAEA, as the case may be.

23. In the event that a difference arises between the Commission or IAEA and the Government of a supplier on whether a particular export is subject to notification, or whether it is prohibited under the plans or on any other substantive matter arising in the course of implementing the mechanism, every effort shall be made to settle the difference through confidential consultations between the Commission or IAEA, on the one hand, and the Government, on the other. In the event that such consultations do not resolve the difference, the matter may be referred by the Commission or IAEA, or the Government concerned, to the Security Council or the Sanctions Committee, as appropriate.

IV. SPECIAL CASES

24. The Commission's plan for ongoing monitoring and verification identifies items, the acquisition of which by Iraq is prohibited save for certain limited exceptions 4/ with respect to which Iraq must obtain prior consent from the Commission. Where such consent is obtained, Iraq must communicate that consent

to the supplier, to be attached to the notification by the Government of the supplier referred to in paragraph 9 above. A special case relates to the emergency import of vaccines, where such import by Iraq may take place with simultaneous notification to the Commission. In such circumstances, the Commission shall notify the supplier, the name of which must be provided to the Commission by Iraq in its simultaneous notification, of its consent. In cases where these requirements are not met, Governments shall be obliged to provide to the Joint Unit, referred to in paragraph 16 above, any information notified to them, by a supplier located on their territories, concerning attempts by Iraq to acquire from that supplier items prohibited under the plans. Governments will be encouraged also to provide any other information they may have on such attempts.

25. The IAEA plan for ongoing monitoring and verification, as approved by the Security Council, requires both Iraq and exporting States to secure prior approval from IAEA or the Sanctions Committee, as the case may be, of transfers to Iraq, in particular prior to the lifting of sanctions. 5/ Once sanctions are lifted, these provisions would be superseded by this mechanism.

26. Attempts might be made to supply Iraq with items subject to the plans in total circumvention of the mechanism. In this respect, Governments may have at their disposal national information concerning unauthorized exports to Iraq which should have been notified under the mechanism. The Commission and IAEA shall exercise their rights, under the relevant Security Council resolutions and the plans, to conduct no-notice on-site inspections at any Iraqi point of entry or elsewhere in Iraq and to require Iraq, where necessary, to impound items until such time as the unopened consignment can be inspected.

27. There may also be attempts to supply Iraq with such items clandestinely through transshipment. By this method, goods could leave the country of origin without the supplier showing Iraq as the final destination. Goods under transshipment are usually deemed for customs purposes to be transit goods; they are not considered to have been imported into the country of transshipment. In order to close this possible loophole, the country of transshipment shall take action in the event that it receives information that Iraq has become indicated as the final destination after the goods were exported from their country of origin. Where this has occurred, the transshipment country shall notify the Joint Unit of all shipments of such items.

28. Where it comes to the attention of a Government that the destination of goods subject to notification, which are located in a bonded warehouse on its territory, has been changed to Iraq, that Government shall inform the Joint Unit accordingly.

29. Data available to the Commission and to IAEA may, in some cases, indicate that Iraq is importing dual-use items in amounts in excess of that required for non-proscribed internal consumption or export. Likewise, such data may indicate the import of items of a quality and nature that is not justified for use in Iraq's non-proscribed programmes. In such cases the Commission and IAEA, shall, in the first instance, inform the Government of Iraq, through the Joint Unit, of its findings and call upon it to cease entering into any arrangements for procurement of these items. Thereafter, the Joint Unit shall, by a circular

note to all States, recommend that they not enter into any new commitments to provide Iraq with the items in question until further notice. Should it prove necessary and in order to decide upon appropriate measures, the Commission or IAEA, as appropriate, shall enter into confidential consultations with the Governments of suppliers with outstanding contracts to provide such items.

Notes

1/ Both the Commission's and IAEA's plans, however, envisage special cases where the import by Iraq of clearly defined items requires prior consent; see paras. 24 and 25.

2/ Any entity involved in a transaction covered by the mechanism which becomes aware that the ultimate destination of a controlled item is Iraq.

3/ These items and technologies are identified in the March 1995 revision of the annexes to the Commission's plan as follows: chemical, in paras. 1, 2, 10, 12 and 13 of annex II; biological, in the appendix to annex III; and, missiles, in paras. 1 and 2 of annex IV. In the nuclear area, they are identified in the March 1995 revision of annex III of the IAEA plan. If, in the future, the annexes are revised, in accordance with the procedures in para. 15 of the present report, and such revisions involve a renumbering of the paragraphs just indicated, the renumbering will be communicated to all States by means of a circular note.

4/ See S/22871/Rev.1, sect. C, Provisions related to chemical items, para. 32, and sect. D, Provisions related to biological items, para. 38.

5/ See S/22872/Rev.1 and Rev.1/Corr.1, Introduction, para. 9, and sect. C, Obligations of Iraq, paras. 23, 25 and 26.

Annex II

Letter dated 17 July 1995 from the Executive Chairman of the United Nations Special Commission addressed to the Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

I have the honour to refer to the proposal for the mechanism for export/import monitoring under paragraph 7 of Security Council resolution 715 (1991), which has been submitted to the Sanctions Committee by the Special Commission and by the International Atomic Energy Agency (IAEA), and which is currently under consideration by it. In connection with that proposal, certain delegations have requested information on the modalities that will be followed by the Special Commission and IAEA in Iraq when implementing that mechanism in Iraq.

The Security Council has, on a number of occasions, confirmed that sole responsibility for carrying out their mandates in Iraq rests with the Special Commission and IAEA (e.g., statement to the press by the President of the Council of 24 September 1991 and statement by the President of the Council of 28 February 1992 (S/23663)). Nevertheless, the Commission and IAEA have kept the Council fully informed of their activities and their modus operandi. In keeping with this practice, it may be useful to indicate the general principles that would be followed in implementing the mechanism in Iraq.

An Office of export/import specialists will be established in the Baghdad Monitoring and Verification Centre and will serve as an administrative clearing-house for communications from Iraq regarding the notification forms that it is required to submit. This Office and the Centre will also implement inspections within Iraq to ensure that the mechanism is being complied with. These inspections will be as vigorous as is necessary to ensure that no violations of the export/import regime occur. In this regard, the Commission and IAEA intend to rely on their full rights under the relevant Security Council resolutions, including resolutions 687 (1991), 707 (1991) and 715 (1991), the plans for ongoing monitoring and verification (S/22871/Rev.1 and S/22872/Rev.1 and Rev.1/Corr.1), the privileges and immunities as set forth in the exchange of letters between the United Nations and Iraq of 6 and 17 May 1991 and the decision to be taken by the Security Council approving the mechanism.

Inspections under the mechanism will take place not only at the declared end-user sites, where notified items will be tagged, as appropriate, and entered into the site protocols, but will also be conducted anywhere else in Iraq where there is reason to believe that notified items or dual-use items in respect of which there should have been notification may be found. To ensure Iraqi compliance, the monitoring will be carried out in whatever ways yield the most effective results, whether by monitoring end-user sites, or border crossings or other locations. For example, if information available to the Commission and experience proves this to be effective, the Commission may station its personnel at key points, including points of entry and of customs inspection in Iraq. The extent to which various inspection rights will be exercised in Iraq will depend,

inter alia, on the degree of Iraqi cooperation in carrying out the mechanism and the findings of the Commission and IAEA regarding the Iraqi customs and import procedures.

I believe that, when the Sanctions Committee is in a position to forward the proposal for the mechanism to the Security Council, as the tripartite proposal called for in paragraph 7 of resolution 715 (1991), it should be accompanied, for purposes of information, by this letter setting out, in general terms, the modalities which it is intended will be followed in implementing the mechanism.

(Signed) Rolf EKÉUS
Executive Chairman of the
United Nations Special Commission